

House Resolution 1036

By: Representatives Bearden of the 68th, Powell of the 29th, and Davis of the 109th

A RESOLUTION

1 Proposing an amendment to the Constitution so as to authorize the General Assembly to
2 revise and clarify the provisions concerning the use of eminent domain; to provide for the
3 purposes for which eminent domain may be used; to provide for related matters; to provide
4 for the submission of this amendment for ratification or rejection; and for other purposes.

5 BE IT RESOLVED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

7 Article I, Section III of the Constitution is amended by striking Paragraph I and inserting a
8 new Paragraph I to read as follows:

9 "Paragraph I. ***Eminent domain.*** (a)(1) Except as otherwise provided in this Paragraph,
10 private property shall not be taken or damaged for public purposes without just and
11 adequate compensation being first paid.

12 (2) Private property may only be taken or damaged through the exercise of the power
13 of eminent domain:

14 (A) When such private property is taken for a public purpose, as defined by the
15 General Assembly, by the state or a county or municipality of the state and title to such
16 property remains in the state or such county or municipality and is not transferred to any
17 other entity, public or private;

18 (B) When such private property is taken for public transportation services or public
19 utility services by a private entity to whom the General Assembly has given the
20 authority to exercise the right of eminent domain and the title to such property remains
21 in such private entity and is used exclusively for such services;

22 (C) When such private property is taken by the state or a county or municipality of
23 the state for the purpose of eliminating blighted areas and the title to such property
24 remains in the state or such county or municipality of the state or is transferred to a
25 private entity for the purpose of eliminating such blighted conditions. As used in this
26 subparagraph, the term 'blighted areas' means:

1 (i) Areas in which there is a predominance of buildings or improvements which are
2 predominantly residential in character and which, by reason of:
3 (I) Dilapidation, deterioration, age, or obsolescence;
4 (II) Inadequate provision for ventilation, light, air, sanitation, or open spaces;
5 (III) High density of population and overcrowding;
6 (IV) The existence of conditions which endanger life or property by fire or other
7 causes; or
8 (V) Any combination of such factors,
9 are conducive to ill health, transmission of disease, infant mortality, juvenile
10 delinquency, and crime and are detrimental to the public health, safety, morals, or
11 welfare; and
12 (ii) Areas which, by reason of:
13 (I) Unsanitary or unsafe conditions;
14 (II) Deterioration of site improvements;
15 (III) Tax or special assessment delinquency exceeding the fair value of the land;
16 (IV) The existence of conditions which endanger life or property by fire or other
17 causes; or
18 (V) Any combination of such factors,
19 constitute an economic or social liability and are a menace to the public health,
20 safety, morals, or welfare in their present condition and use; or
21 (D) When private property is damaged for a public purpose, as defined by the
22 General Assembly, by the state, a county or municipality of this state, or a private entity
23 authorized by the General Assembly to exercise the power of eminent domain and the
24 title to such property remains in the owner of such property.
25 (3) When exercising the power of eminent domain as authorized under this Paragraph,
26 only the minimum amount of private property necessary to achieve the purposes
27 permitted in this Paragraph shall be taken or damaged.
28 (4) A public purpose shall be as defined by the General Assembly by general law, but
29 in no event shall a public purpose be defined or construed to include the exercise of
30 eminent domain solely or primarily for the purpose of improving tax revenue or the tax
31 base of the state or a county, municipality, or other governmental entity of the state or the
32 purpose of economic development. The power of eminent domain shall not be used to
33 take property for the purpose of transferring, leasing, or allowing the use of such property
34 to a private developer, corporation, or other entity solely or primarily to attempt to expand
35 tax revenue, increase the taxable value of the property, or promote economic development
36 except as specifically provided in this Paragraph for blighted areas.

1 (5) Prior to exercising the power of eminent domain to take private property for public
2 purposes, the entity exercising such power shall file a declaration of taking specifically
3 setting forth the purpose for such taking and such other information as the General
4 Assembly may require by general law. Such entity shall have a period not to exceed three
5 years from the date the estate or interest in the condemned property is acquired in which
6 to commence public use of the condemned property in the manner set forth in the
7 declaration. If such use does not commence during such period, such entity shall offer
8 the owner of such property at the time of its acquisition or, if the tract from which such
9 entity acquired such property has been subsequently sold, the owner of abutting land
10 holding title through the owner from whom such entity acquired such property the option
11 to purchase such property at the price paid to the previous owner for its acquisition by
12 eminent domain by such entity. The manner of providing such offer and the manner of
13 purchasing such property shall be as provided by the General Assembly by general law.
14 For purposes of this subparagraph, if the declared use is the use of a building or structure
15 to be erected or renovated on such property, such use shall be deemed to commence when
16 actual erection or renovation of the building or structure commences on such property,
17 which shall not include land clearing, road building, laying of utility lines or pipes, or
18 other such site preparation.

19 (b) When private property is taken or damaged by the state or the counties or
20 municipalities of the state for public road or street purposes, or for public transportation
21 purposes, or for any other public purposes as determined by the General Assembly, just and
22 adequate compensation therefor need not be paid until the same has been finally fixed and
23 determined as provided by law; but such just and adequate compensation shall then be paid
24 in preference to all other obligations except bonded indebtedness.

25 (c) The General Assembly may by law require the condemnor to make prepayment
26 against adequate compensation as a condition precedent to the exercise of the right of
27 eminent domain and provide for the disbursement of the same to the end that the rights and
28 equities of the property owner, lien holders, and the state and its subdivisions may be
29 protected.

30 (d) The General Assembly may provide by law for the payment by the condemnor of
31 reasonable expenses, including attorney's fees, incurred by the condemnee in determining
32 just and adequate compensation.

33 (e) Notwithstanding any other provision of the Constitution, the General Assembly may
34 provide by law for relocation assistance and payments to persons displaced through the
35 exercise of the power of eminent domain or because of public projects or programs; and
36 the powers of taxation may be exercised and public funds expended in furtherance thereof."

SECTION 2.

The above proposed amendment to the Constitution shall be published and submitted as provided in Article X, Section I, Paragraph II of the Constitution. The ballot submitting the above proposed amendment shall have written or printed thereon the following:

"() YES Shall the Constitution of Georgia be amended so as to revise and clarify the

() NO purposes for which the power of eminent domain may be used?"

All persons desiring to vote in favor of ratifying the proposed amendment shall vote "Yes."

All persons desiring to vote against ratifying the proposed amendment shall vote "No." If such amendment shall be ratified as provided in said Paragraph of the Constitution, it shall become a part of the Constitution of this state.